DEEPWATER HORIZON (DWH) OIL SPILL

June 14, 2010

Protecting the Public from Oil-Contaminated Seafood: Fishery Area Closure and Surveillance Plan

As part of the federal government's comprehensive efforts to ensure seafood safety, the National Oceanic and Atmospheric Administration (NOAA), in coordination with the U.S. Food and Drug Administration (FDA), has taken an aggressive and precautionary approach to prevent exposure of consumers to potential seafood contamination in the Gulf of Mexico. Closing oiled areas to fishing is the primary tool for preventing the entry of tainted fish and fishery products into the market place. Ongoing sampling of seafood will help ensure that closures are protecting the Nation's seafood supply.

The elements of the Federal strategy for seafood safety include:

Fishery Area Closure: Under its first emergency rule, promulgated on May 2, 2010, and subsequently revised on May 11, 2010, NOAA Fisheries has closed, and will continue to close, areas in the Gulf of Mexico in which there is visible oil on the surface. NOAA is also closing areas where NOAA has evidence of clearly detectable levels of subsurface oil from the BP Deepwater Horizon (DWH) oil spill, as well as areas that do not currently have surface oil but where the agency projects there will be surface oil based on NOAA's 48 to 72 hour surface oil trajectory forecasts and subsurface oil locations. In addition, NOAA has closed, and will continue to close, a 5 mile buffer area around the known or projected oil locations as a precaution. This buffer area accounts for uncertainties in the actual boundaries of the oil and movement of fish. To date, NOAA has not observed any subsurface oil outside the boundaries of the closed area. The Coast Guard and NOAA are monitoring the closed federal areas to ensure that fishermen are not fishing within those areas and will take enforcement action against fishermen violating the closure boundary.

Under their individual authorities, states have closed, and will continue to close, areas in the Gulf of Mexico in waters under their jurisdiction. The FDA is working with both NOAA and the states to monitor the situation and ensure that appropriate closures are in place. Fishermen and consumers should report any seafood contaminated by oil to 1-888-INFO FDA (1-888-463-6332) and include available details on the location of the seafood or catch, kind of seafood, and suspected contamination.

Surveillance Plan: NOAA will continue to sample fish in the vicinity of the closed area to account for the possibility that contaminated fish may move out of the closed area. NOAA has been taking baseline fish tissue samples in areas where there is currently no visible oil. NOAA also has historic baseline samples, which were taken after Hurricanes Katrina and Rita. NOAA will compare the surveillance samples with the baseline samples to evaluate whether contaminated fish are present outside the closed area. If fish samples have elevated levels of oil compounds, it is an indication that the boundaries and buffer zones of the closed area will need to be expanded to include areas where contaminated fish have been found. If NOAA finds evidence of tainted fish outside the closure area, NOAA will reevaluate the closure criteria and whether the evidence is sufficient to warrant changes to the criteria.

Dockside Sampling: NOAA is implementing a targeted dockside sampling program and will conduct tests of fish products arriving at docks as an additional level of screening to ensure that fish caught from outside the closed area are not contaminated. NOAA will verify that the catch was caught outside of a closed area either by vessel monitoring systems that track the location of a vessel or by an on-board observer. If tainted fish are found in dockside sampling, NOAA will notify the appropriate FDA and State seafood officials who have the authority to prevent oiled fish from entering commerce in fish markets or elsewhere, and evaluate whether there is sufficient evidence to warrant changes to the closure boundary.

Additional Baseline Sampling: In order for the surveillance sampling to be effective, NOAA needs an adequate comparison baseline as to the conditions of oil contaminants in the water and fishery prior to the Gulf spill. NOAA has an understanding of the pre-spill baseline conditions from a significant post-hurricane Katrina and Rita sampling effort as well as recently collected samples taken in Federal waters off Louisiana, Mississippi, and Alabama. The oil continues to spread and move. For this reason, more baseline sampling conducted by NOAA and EPA will enable the agencies to develop an even more robust understanding of the pre-exposure levels, particularly in areas off Florida and Texas. Therefore, NOAA and EPA will continue to gather baseline samples in oil-free Gulf waters in advance of any impact from the DWH spill.

States also need an adequate comparison baseline as to the presence of oil contaminants in the water and fishery prior to the Gulf spill. FDA has agreed to analyze baseline samples previously collected by the states. FDA has developed and distributed a baseline sample procedure to each state.

FDA Seafood Safety Program: The FDA operates a mandatory safety program for all fish and fishery products under the provisions of the Federal Food, Drug and Cosmetic Act, the Public Health Service Act, and related regulations. The FDA's seafood Hazard Analysis and Critical Control Point (HACCP) regulation requires processors to identify and control hazards which are reasonably likely to occur. FDA is issuing a letter reminding fish and fishery product processors of FDA's regulations and policy concerning the food safety hazard of environmental chemical contaminants, including the importance of verifying that fish they are processing have not come from closed waters. In addition, FDA is increasing inspections of Gulf Coast seafood processors to ensure compliance with this regulation.

FDA Market Surveillance: FDA is implementing a risk-based surveillance sampling program targeting seafood products at Gulf Coast seafood processors. The agency will be targeting oysters, crabs, and shrimp, which could retain contaminants longer than finfish. This sampling will provide verification that seafood on the market is safe to eat. FDA's sampling activities are designed to complement the dockside monitoring of finfish already planned by NOAA and described above.

Minimizing Economic Harm from the Oil Spill – The NOAA/FDA Reopening Protocol: NOAA and FDA recognize that the effects of the oil spill continue to grow as the oil continues to flow. However, as remediation efforts continue, it may be possible to alleviate some of the economic harm caused by the oil spill by reopening previously closed areas. NOAA will reopen these areas only if it is assured, based on testing of seafood from the area and consultation with FDA, that fish products within the closed area meet FDA standards for public health and wholesomeness. To that end, NOAA and FDA are continuing to refine a reopening protocol based on both chemical and sensory analysis of seafood within the closed area.